

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES

v.

**SHIH MING SHIUE,
Defendant.**

Criminal No. 05-10021-NMG

**DEFENDANT SHIH MING SHIUE'S LIMITED OBJECTION TO
THE UNITED STATES' MOTION FOR THE ENTRY OF A PRELIMINARY ORDER
OF FORFEITURE AND MONEY JUDGMENT**

The defendant Shih Ming Shiue, by and through his attorney, Geoffrey E. Hobart, respectfully submits this limited objection to the United States' Motion for the Issuance of a Preliminary Order of Forfeiture and Money Judgment. The grounds for this limited objection are set forth below.

1. Mr. Shiue appeared before this Court on October 28, 2005 and pled guilty to the charges against him. In his plea agreement, Mr. Shiue agreed to forfeit \$5,065,000 to the United States in recognition of the amount of the anti-dumping duty that was avoided by Mr. Shiue and his sister as a result of the conduct alleged in the Indictment. Mr. Shiue's plea agreement contained a standard substitute asset provision. The plea agreement does not describe any specific substitute assets.

2. In its motion, the government seeks a preliminary order of forfeiture for Mr. Shiue's principal residence, 41 Fairbanks Road in Lexington, Massachusetts.

3. Mr. Shiue and his wife, Siaw Jin Choo Shiue, purchased their home on May 1, 1999. As set forth in the deed to the property, Mr. Shiue and his wife own the property located at 41 Fairbanks Road as tenants by the entirety. Since 1999, Mr. Shiue has resided at 41

Fairbanks Road with his wife and his two daughters. A copy of the deed to the property is attached hereto.

4. Siaw Jin Choo Shiue is not named as a defendant in the Indictment in this case and the government has not alleged that she was involved in any of the conduct described in the Indictment.

5. Chapter 209 of the Massachusetts General Laws sets forth the rights of married persons who own property as tenants by the entirety. Chapter 209 states, in pertinent part, “[t]he interest of a debtor spouse in property held by tenants by the entirety shall not be subject to seizure or execution by a creditor of such debtor spouse so long as such property is the principal residence of the nondebtor spouse . . .” As an owner of 41 Fairbanks Road by tenants by the entirety, Mr. Shiue’s wife, Siaw Jin Choo Shiue, has an undivided right of possession, title and enjoyment of the whole property. As such, the government is not entitled to a preliminary order forfeiture because Mr. Shiue does not possess an independent interest in the property that is properly subject to forfeiture. See United States v. Rodgers, 461 U.S. 677, 703 n. 31 (1983)(government cannot levy on property held through a tenancy by the entirety because under the “peculiar legal fiction governing tenancies by the entirety in some States, no tax lien could attach in the first place because neither spouse possessed an independent interest in the property”).

WHEREFORE, because Mr. Shiue owns 41 Fairbanks Road with his wife (an innocent party) as tenants by the entirety, the Court should exclude 41 Fairbanks Road from the Preliminary Order of Forfeiture requested by the government. Mr. Shiue has no other objection to the government's motion.

Respectfully submitted,

SHIH MING SHIUE
Defendant

By: /s/ Geoffrey E. Hobart
Geoffrey E. Hobart
BBO #547499
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-662-5281

Dated: February 17, 2006

Certificate of Service

I, Geoffrey E. Hobart, hereby certify that, on February 17, 2006, I caused copies of this pleading to be mailed by first-class mail to Assistant U.S. Attorneys Heidi Brieger and Jennifer Zacks.

/s/ Geoffrey E. Hobart

EXHIBIT A

From Transfer Certificate No. 105040 in Registration Book 655, Page 90
Originally Registered July 10, 1961 for the South Registry District of
Middlesex County

This is to Certify that

Shih Ming Shiue and Siaw Jin Choo Shiue
of Winchester in the County of Middlesex and Commonwealth of Massachusetts
married to each other, are the owners in fee simple, as tenants by the entirety
of that certain parcel of land situate in Lexington
in the County of Middlesex and said Commonwealth, described as follows:

Southwesterly by the Northeasterly line of Fairbanks Road,
being a curving line, one hundred and twenty-five feet;
Northwesterly by lot 332 as shown on plan hereinafter mentioned,
one hundred and twenty-five feet;
Northeasterly by lot I on said plan, two hundred ninety-four
and 03/100 feet; and
Southerly by lot 340 on said plan, two hundred thirty-six
and 65/100 feet.

Said parcel is shown as lot 333 on said plan, (Plan No. 6962-15).

All of said boundaries are determined by the Court to be located as shown on
a subdivision plan, as approved by the Court, filed in the Land Registration
Office, a copy of which is filed in the Registry of Deeds for the South
Registry District of Middlesex County in Registration Book 563, Page 107, with
Certificate 86657.

The above described land is subject to a Grant of Easement from Joseph P.
Spinelli et al, Trustees to New England Telephone and Telegraph Company and
Boston Edison Company, Document 302441.

Together with the right to pass and repass on Fairbanks Road, Tufts Road and
any other roads that may be constructed on lands of Joseph P. Spinelli et al,
Trustees, for all purposes as streets are commonly used, set forth in Document
367931.

And it is further certified that said land is under the operation and
provisions of Chapter 185 of the General Laws and any amendments thereto, and
that the title of said

Shih Ming Shiue and Siaw Jin Choo Shiue

to said land is registered under said Chapter subject, however, to any of the
encumbrances mentioned in Section forty-six of said Chapter, and any
amendments thereto, which may be subsisting, and subject also as aforesaid.

Witness MARILYN M. SULLIVAN, Chief Justice of the Land Court, Department
of the Trial Court, at Cambridge in said County of Middlesex

the first day of May the year nineteen hundred and ninety
at 2 o'clock and 7 minutes in the after-noon.

Attest, with the Seal of said Court,

Eugene C. Brennan
Assistant Recorder

Address of owners: 47 Fairbanks Road, Lexington, MA 02173

Land Court Case No. 6962

ID# 1104

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